

## **REMARKS**

Applicants have cancelled claim 15 without prejudice and have amended claims 11 and 21. Claims 11-14 and 16-21 are pending in the application.

The amendment to claim 21 has been made to overcome the rejection of that claim under 35 U.S.C. § 112, paragraph 2. In this respect, applicants have adopted the proposed understanding of the Examiner, as indicated in the office action.

Claim 11 has been amended to include the subject matter of claim 15, and claim 15 has been cancelled. In particular, the step of moving the fixation mark is made so that the movement of the fixation mark is used to position the eye in a specific manner so that the patient can easily follow the fixation mark. This change more specifically points out applicant's invention and further distinguishes applicant's invention from the prior art.

The primary rejection is to claims 11-16 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Sponsel et al in view of Eydelman et al. Reconsideration and withdrawal of this rejection is requested. The following reasons are presented in support of this position.

Sponsel discloses a method and an arrangement for measuring visual acuity. The proposed approach is used exclusively for testing vision, particularly for measuring the visual acuity of a patient. For this purpose, letters of different sizes and/or a movable fixation mark are/is projected in the vision field of the patient to be examined at different locations and/or for different periods of time.

Further, the proposed approach makes it possible to determine the degree or progress of age-related macular degeneration (AMD), glaucoma, or other diseases of the retina.

For this purpose, it is not absolutely necessary that a fixation mark projected in the eye be moved slowly so that the patient can easily follow the fixation mark. On the contrary, the important point is simply that the fixation mark be recognized at the projected location so that the object of measuring visual acuity or testing vision can be carried out.

The essential difference between Sponsel's approach and the claimed invention consists in the completely different use of the fixation mark. In Sponsel, the fixation mark is used to test vision or to determine visual acuity in that the recognition or nonrecognition of the fixation mark is evaluated as a criterion for drawing the appropriate conclusions. In contrast, the fixation mark is used in the claimed invention exclusively for deliberately positioning the eye to be examined or treated by directing the eye to the moving fixation mark. Thus, Sponsel is basically distinguishable with respect to applicants' claimed invention.

The combination of Eydelman offers nothing to support a position of obviousness based on the combination of Sponsel and Eydelman. Eydelman's solution likewise concerns a method for testing and treating vision disorders. For this purpose, the patient is shown individual images on the basis of which the patient's vision threshold can be determined. The Examiner only cites the text with "foveal fixation" (column 1, lines 66-68). According to this "the patient is then asked to look at individual letters in decreasing sizes with true "foveal fixation." Of course, the patient fixes his/her eye foveally when detecting a mark; this happens entirely automatically. It should be noted here, however, that in this case as well, the fixation mark is used for testing vision or determining visual acuity in that the recognition or nonrecognition of the fixation mark is evaluated as a criterion for drawing the appropriate conclusions. Accordingly, there is no basis to combine Eydelman's disclosure with Sponsel and, further, the combination does not render the claimed invention obvious.

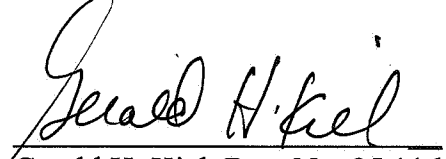
The Examiner also rejected claims 17-20 over the same two references (Sponsel and Eydelman) and further in view of Jernigan. Jernigan's disclosure also concerns determining the vision field of a patient, wherein the projection apparatus displays the target images at the different positions of the vision field and in a programmed sequence. Based on the recognizability of the images and/or marks, conclusions can be made about the vision field and/or visual acuity of the patient.

While Jernigan discloses the use of an x-y mirror unit for moving the fixation mark, he neither discloses nor renders obvious that a diagnosis beam or therapy beam (which is not provided in Jernigan) is also moved by this mirror unit in addition to the fixation mark. Here,

again, this combination of references does not render applicants' claimed invention obvious, in that all of the references relate to devices and methods for determining vision field or visual acuity in which the images or marks must necessarily be displayed at different locations of the vision field. Consequently, the fixation marks are used exclusively for testing vision or determining visual acuity by evaluating the recognition or nonrecognition as criterion for drawing appropriate conclusions. In contrast, the claimed invention relates to a fixation mark which is presented to the patient to prevent unwanted eye movements during the treatment of the eye (see amended claim 11) without imposing greater demands on the patient's ability to concentrate. To prevent unwanted eye movements, the fixation mark is moved in the visual field of the patient and the movement is carried out in such a way that the patient can easily follow the fixation mark.

Based on the above, all of the claims should now be allowed and this application should be promptly passed to issue. If this Amendment is not entered for purposes of allowance, please enter it for purposes of appeal.

Respectfully submitted,

  
Gerald H. Kiel, Reg. No. 25,116  
Attorney for Applicant

Reed Smith LLP  
599 Lexington Avenue  
29<sup>th</sup> Floor  
New York, NY 10022-7650  
Tel.: (212)521-5400

GHK/jl